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April 25, 1997

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APR 25 1997

Federal Communications Commission
Office of Secretary

Via Hand Delivery

William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**
IB Docket No. 96-111

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's rules, 47 C.F.R. § 1.1206(a)(1), I, on behalf of ICO Global Communications, ("ICO"), am submitting two copies of this transmittal letter and the attached written presentation to the Office of the Secretary for inclusion in the public record in the above-captioned proceeding.

This presentation is also being submitted to the International Bureau Reference Room for inclusion in the public file established for written comments on the International Bureau Roundtable Discussion on DISCO II and the WTO Basic Telecommunications Agreement. See Public Notice, Report No. IB 97-10, DA 97-683 (Apr. 7, 1997).

Please direct any questions or concerns to the undersigned.

Very truly yours,



Cheryl A. Tritt
Counsel for ICO Global Communications

Attachment

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Office of the International Bureau Chief
Satellite Policy Branch - Suite 800
2000 M Street, N.W. Stop code 0800
Washington, D.C. 20554
Attention: Suzanne Hutchings

Re: Submission for DISCO II Roundtable Meeting

Dear Ms. Hutchings:

ICO Global Communications ("ICO") welcomes the opportunity to express its views on the impact of the World Trade Organization's ("WTO") recently concluded Basic Telecommunications Agreement ("GBT Agreement") on U.S. market access for global mobile satellite service operators. As an advocate of open, competitive, and non-discriminatory international market access for MSS, ICO strongly supports the GBT Agreement. The Agreement, however, requires that the Federal Communications Commission ("FCC" or "Commission") abandon, or at the very least, alter substantially, its pending DISCO II proposals for regulating U.S. market access by non U.S.-licensed MSS operators.

General Comments

As discussed in more detail below, application of the ECO-Sat reciprocity test would violate two core principles of the Agreement. First ECO-Sat violates the National Treatment obligation because the test is not applied to U.S. domestic satellite providers. Second, as a reciprocity test, it inherently discriminates between WTO member countries and thus, violates the Most Favored Nation principle of the Agreement. Accordingly, the Commission cannot rely on the reciprocal approach represented by the ECO-Sat test to assess U.S. market access by non-U.S. licensed MSS systems of a WTO Member.

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Office of the International Bureau Chief

April 25, 1997

Page Two

Moreover, the FCC should not create a separate market access test for MSS systems of non WTO Members. The GBT Agreement covers Member countries that account for more than 90 per cent of telecoms revenue worldwide and serves as a strong incentive for non Member countries to introduce competition into their telecommunications markets.

Responses to Roundtable Discussion Questions

ICO responds to the relevant discussion questions posed in the April 7, 1997 Public Notice announcing the roundtable as follows:

- 1. Should our consideration of additional public interest factors, including the promotion of competition in the United States, be modified or expanded?*

No. The Commission's well-established consideration of public interest factors, including the promotion of competition within the United States, is sufficient to promote legitimate Commission goals concerning domestic policy. Pursuant to the GBT Agreement, the Commission is committed to remove foreign market considerations from its market entry analysis for service providers of Member countries. The Commission must not allow the "expansion" or "modification" of these principles to constitute an additional barrier to entry by non-U.S.-licensed satellite systems or to simply serve as a substitute for the proposed ECO-Sat test. The public interest factors must be narrowly tailored and carefully applied so that the public interest examination does not become an indirect method of applying a reciprocity test.

- 2. How should the proposed ECO-Sat test be modified with respect to satellites licensed by WTO members, including systems that have investment by non-WTO members?*

The GATS treaty obligation clearly applies to service providers of a Member of the WTO. As an entity whose operations will be authorized by the U.K. government, which is a WTO Member, there is no question that ICO's activities in the U.S. market are covered by the benefits of the Agreement.

As noted above, the proposed ECO-Sat test is inconsistent with both National Treatment and Most Favored Nation principles of the GBT Agreement and must be eliminated, certainly in its application to MSS providers like ICO that are authorized by WTO members. Further, the imposition of an ECO-Sat reciprocity test on systems based upon investment by non-WTO members would create an inappropriate and unnecessarily

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Office of the International Bureau Chief

April 25, 1997

Page Three

complex regulatory scheme. Given the existing trend toward competition internationally, non-member countries are likely to open their markets without unilateral action from the Commission. For example, with respect to those non-member countries with the greatest market potential for MSS, such as China and Russia, ICO notes that the U.S.-licensed Iridium and Globalstar MSS systems have already secured service providers or investor relationships in both those countries.

3. *Should the proposed ECO-Sat test and public interest factors be modified with respect to satellites licensed by non-WTO members? If so, what specific criteria should be applied?*

The GBT Agreement includes sixty-nine government signatories and covers countries accounting for more than 90 percent of telecommunications revenues worldwide. The agreement therefore ensures non-discriminatory market access to the overwhelming majority of the more than half a trillion dollar world telecommunications market. The Commission should not waste scarce resources by attempting to devise a reciprocity test that will apply to only a small number of countries' investment in satellite systems licensed by non-WTO members. A two-tier regulatory system for member and non-member countries would unnecessarily complicate the regulatory landscape without advancing the central goal of increased competition.

Imposition of a market reciprocity standard for non-member countries would also involve consideration of trade issues that are more properly left to the Executive Branch. Implementation of an ECO-Sat type test for non-members would constitute a unilateral retaliatory trade policy initiative that infringes on the Executive Branch's authority to impose retaliatory measures on services. Such a unilateral initiative would also undermine the success of U.S. efforts in promoting multilateral approaches to trade policy issues, as demonstrated in the GBT process. Moreover, the Executive Branch, through USTR, continues to work with both member and non-member countries to encourage further market opening efforts. If the Commission were to adopt special reciprocal measures for non-members, such action could encourage those countries to adopt reciprocal countermeasures, thereby further impairing competition. The GBT agreement will suffice to protect competition in international markets. Additional measures designed for non-member markets are entirely unnecessary.

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Office of the International Bureau Chief

April 25, 1997

Page Four

Conclusion

The recent GBT agreement is a watershed event in the development of international telecommunications markets. Market barriers in Member countries will begin to fall as early as next year, bringing new competition and improved quality of service into the telecommunications marketplace. The successful multilateral efforts of the WTO/GBT effectively have achieved the Commission's goals set forth in the DISCO II proceeding. The FCC no longer can continue its reciprocal approach in assessing non U.S. licensed service providers' access to the U.S. market. Reliance on its existing public interest standard is a fully adequate approach to judge whether a non-U.S.-licensed MSS operator's entry into the U.S. market will have a distortive effect on the U.S. market. In addition, the Commission should continue its leadership efforts in multilateral fora to continue to promote competition in telecommunications markets around the world.

Very truly yours,



Cheryl A. Tritt

Counsel for ICO Global Communications

cc: Peter Cowhey
Thomas S. Tycz
Fern Jarmulnek
William F. Caton